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Paper Number 35

In re Application of	:	
Peter Miller	:	
Serial No.: 09/242, 072	:	DECISION ON
Filed: January 14, 2000	:	PETITION
For: APPARATUS FOR LIQUID PURIFICATION	:	

This is a Decision on the Petition filed under 37 C.F.R. 1.181 on April 21, 2003. The Petition requests that the holding of abandonment of January 12, 2003 be withdrawn and Applicant's "Response App.6", filed August 16, 2002 be treated as being filed timely and as basis for determining a declaration of allowance. Applicant further comments in his petition that the final rejection mailed March 13, 2002 cannot be justified.

As noted in the Petition Decision mailed January 6, 2003, the Examiner has properly considered Applicant's response filed August 16, 2002 and an advisory action was mailed December 12, 2002. The Decision also held that the final rejection dated March 13, 2002 is not premature and is justified because the only new grounds of objection and rejection contained in the office action were necessitated by Applicant's amendment filed November 20, 2001. That amendment introduced new matter into both the specification and claims. Applicant's amendment necessitated the new ground(s) of rejection presented in the office action. As discussed in the MPEP at 706.07(a):

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

With respect to the consideration of Applicant's "Response App.6", it should be noted that MPEP 714.13 states:

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see 37 CFR 1.116) or reinstate previously canceled claims. Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other

way requires only a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR 1.116(c) is expected in all amendments after final rejection. Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment.

Regarding the issue of Abandonment, Applicant's petition has no merit. All the procedures of the Rules and Statutes were properly followed in the prosecution of the application and Applicant failed to take appropriate action to prevent abandonment. After-final practice is governed by 37 CFR 1.113 and states:

37 CFR 1.113: Final rejection or action.


(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicants, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

The PETITION is **DISMISSED**.

No period for response exists in this application. If Applicant considers the abandonment of the application unintentional, a petition may be filed under 37 CFR 1.137(b).



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